



# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER  
GOVERNOR

Certified Mail: 7003 1680 0000 6167 6759

December 22, 2008

Mr. Phil Kleinheinz  
Fire Chief  
Santa Clara City Fire Department  
777 Benton Street  
Santa Clara, California 95050

Dear Mr. Kleinheinz:

The California Environmental Protection Agency (Cal/EPA), Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of the City of Santa Clara Fire Department, Hazardous Materials Division Certified Unified Program Agency (CUPA) on October 7 and 8, 2008. The evaluation was comprised of an in-office program review and field oversight inspections by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that Santa Clara Fire Department, Hazardous Materials Division's program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Jennifer Lorenzo every 90 days after the evaluation date. The first deficiency progress report is due on March 22, 2008.

Cal/EPA also noted during this evaluation that Santa Clara Fire Department has worked to bring about a number of local program innovations, including its environmental education, outreach, and various other public service programs. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program Web site to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at [jbohon@calepa.ca.gov](mailto:jbohon@calepa.ca.gov).

Sincerely,

[Original signed by Jim Bohon for]

Don Johnson  
Assistant Secretary  
California Environmental Protection Agency

Enclosure

cc: Sent via email:

Mr. David Parker  
Hazardous Materials Administrator (CUPA Manager)  
Santa Clara City Fire Department  
Hazardous Materials Division  
1675 Lincoln Street  
Santa Clara, California 95050

Ms. Jennifer Lorenzo  
Cal/EPA Unified Program  
P.O. Box 2815  
Sacramento, California 95812-2815

Mr. Terry Snyder  
State Water Resources Control Board  
P.O. Box 944212  
Sacramento, California 94244-2102

Mr. Brian Abeel  
Governor's Office of Emergency Services  
3650 Schriever Avenue  
Mather, California 95655

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cc: Sent via email:

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Mr. Charles McLaughlin  
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Department of Toxic Substances Control  
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Mr. Ben Ho  
Office of the State Fire Marshal  
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Sacramento, California 94244-2460



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Enclosure



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## **CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS**

### **CUPA: CITY OF SANTA CLARA FIRE DEPARTMENT, HAZARDOUS MATERIALS DIVISION**

**Evaluation Dates: October 7 and 8, 2008**

#### **EVALUATION TEAM**

**Cal/EPA: Jennifer Lorenzo**

**DTSC: Asha Arora**

**SWRCB: Terry Snyder**

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. Questions or comments can be directed to Jennifer Lorenzo at (916) 327-9560.

	<b><u>Deficiency</u></b>	<b><u>Corrective Action</u></b>
<b>1</b>	<p>The CUPA's Inspection and Enforcement Program (I&amp;E) Plan does not contain a required element and has not been reviewed annually. The I&amp;E Program Plan does not identify all available enforcement options. For example, the use of red tags for the underground storage tank (UST) program is not identified but has been used by the CUPA.</p> <p>During the evaluation, the CUPA stated that it will revise its I&amp;E Program Plan and utilize the "Guidance Document for Inspection and Enforcement" as guidance.</p> <p><b>CCR, Title 27, Section 15200 (a)(6) and (9), and (b) [Cal/EPA]</b></p>	<p>By September 18, 2009, the CUPA will finalize its I&amp;E Program Plan to include all the required elements and review the plan annually thereafter.</p>
<b>2</b>	<p>The CUPA has not established a procedure necessary to resolve a fee dispute between the CUPA and a regulated business.</p> <p><b>CCR, Title 27, Section 15210 (k) [Cal/EPA]</b></p>	<p>By June 22, 2009, the CUPA will develop a fee dispute resolution procedure.</p>
<b>3</b>	<p>The CUPA has not met the mandated inspection frequency for underground storage tank (UST) facility compliance inspections. This deficiency was also identified during the CUPA's last evaluation in 2005 and plans were made to improve the number of inspections. Inspection frequencies for the last three fiscal years were 94% (05/06), 87% (06/07), and 64% (07/08). During the first six months of 2008, 25 of 70 UST facilities were inspected which would equate to a 71% inspection frequency and assumes 45 facilities have yet to be inspected to reach</p>	<p>The CUPA will conduct compliance inspections for all UST facilities each year, which will be reflected on their Annual Summary Report 3 and Semi-Annual Report 6.</p> <p>The CUPA already has a plan to add additional resources to assist in meeting its scheduled inspection frequencies.</p>

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	<p>100%. The CUPA's goal is to meet the inspection frequencies and conduct the compliance inspection during the annual monitoring certification. The CUPA has met their inspection frequency in prior years; however, in the last two years, inspection frequency has not been met due to staff shortage and the reassignment of some staff time to other departmental duties. The CUPA stated that they are using a risk-based evaluation process to first inspect the facilities with the highest potential for environmental impacts or are recalcitrant in returning to compliance after Notice of Violation. This provides maximum protection for the environment yet may reduce compliance frequencies.</p> <p><b>HSC, Chapter 6.7, Section 25288 (a) [SWRCB]</b></p>	<p>The CUPA has been seeking approval for additional staff or to fill the vacant position (primary UST inspector). This deficiency will be considered corrected when approval is granted.</p> <p>The SWRCB recommends that this approval be obtained as soon as possible. Please report the status in the first deficiency progress report.</p>
4	<p>The CUPA is not gathering the required information as specified on the new Unified Program Consolidated Forms A, B, C, and D for an application for a permit to operate an UST or for renewal of the permit. These forms were revised and approved with the new requirements of California Code of Regulations title 27 and title 23 that became effective in January 2008. The new forms have additional information that is not captured on previous forms. The CUPA may use their own forms, but the forms must include all the new data elements.</p> <p><b>HSC, Chapter 6.7, Section 25286 (a) CCR, Title 23, Section 2711 and Title 27, Sections 15185 and 15188 [SWRCB]</b></p>	<p>The CUPA will ensure that all UST facilities are up-to-date with the new forms by October 8, 2009. The CUPA could leave the new forms with the owner/operators of the UST facility during the annual inspection and require them to complete the form and submit them to the CUPA. Otherwise, the CUPA may want to transmit the forms electronically to the owner/operators and have them returned in an electronic format for inclusion in the database.</p>
5	<p>The CUPA issues a consolidated permit (Business License) to UST facilities. The permit does not contain the UST specific elements. The CUPA presented a UST permit template to be used as an addendum to the consolidated permit. The template contains all the required UST elements but the monitoring identification does not specify all the monitoring requirements.</p> <p><b>CCR, Title 23, Section 2712 (c) [SWRCB]</b></p>	<p>The CUPA shall include UST specific elements in the consolidated permits issued to UST facilities. The monitoring requirements identified shall include all monitoring of tanks, piping, under-dispenser containments (UDCs), and sumps that are specified in the approved monitoring plans.</p> <p>By June 22, 2009, the CUPA will do this with all consolidated permits issued.</p>
6	<p>The CUPA does not have a process which includes a mechanism to withhold issuance of a permit based on non-compliance. The CUPA issues the consolidated permit upon payment of fees.</p> <p><b>HSC, Chapter 6.7, Sections 25284 (d) and 25285 (b); and CCR, Title 23, Section 2712 (e) [SWRCB]</b></p>	<p>By March 22, 2009, the CUPA needs to develop a policy with a process mechanism to withhold issuance of a permit based on non-compliance. If the inspection indicated noncompliance, then the local agency shall verify by a follow-up inspection or return to compliance with Self Certification and accompanying documentation by the owner/operator that</p>

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		all required corrections have been implemented before renewing the permit.
7	<p>The CUPA is not citing violations in a manner consistent with the definition of a minor, Class II or Class I as provided in statutes and regulations. For example:</p> <p>The CUPA failed to correctly classify the following violations and subsequently implement its graduated series of enforcement actions.</p> <ul style="list-style-type: none"> <li>a. The inspection report of Affymetrix, Inc., dated October 23 and November 19, 2007, noted storage of hazardous waste at satellite accumulation area (SAA) over one year as a minor violation. One 5-gallon container of spent sulfuric acid and one 15-gallon container of waste flammables were stored with "12/28/04" as the initial dates of accumulation.</li> <li>b. The inspection report of Mimix Broadband, dated September 28, 2005, noted storage of one one-gallon container of waste solvent stored at a SAA over one year with the initial date of accumulation of "2003" as a minor violation.</li> <li>c. The inspection report of ENS Technology, LLC, dated July 15, 2003, noted failure to obtain current tank system certifications for the wastewater treatment system by a registered professional engineer (P.E.) as a minor violation. The CUPA received tank assessment certification signed by a chemical engineer on December 15, 2004.</li> <li>d. The inspection report of Hunter Technology, dated December 21, 2004, noted failure to obtain current tank system certifications for the wastewater treatment system by a registered P.E. as a minor violation. The CUPA received tank assessment certification signed by a chemical engineer on January 12, 2005.</li> </ul> <p>It is DTSC's understanding from the California Board of Professional Engineers and Land Surveyors that the seismic analysis must be signed off by a civil, geotech, or structural engineer.</p> <p><b>HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6, and Chapter 6.11, Sections 25404, and 25201; CCR, Title 22, Sections 66260.10 and 66262.34, subsection (e)(1)(B) and Title 27, Section 15200 (a) [DTSC]</b></p>	<p>Effective immediately, the CUPA will follow its Inspection and Enforcement Program Plan.</p> <p>The CUPA will submit a plan to address the classes of violation in the CUPA's deficiency progress report.</p> <p>By March 22, 2009, the CUPA will provide LQG refresher and violation classification trainings to its inspectors.</p>

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<b>8</b>	<p>The CUPA is not conducting inspections in a manner consistent with state statute or regulation for businesses subject to tiered permitting program. For example, during the oversight inspection of ENS Technology, LLC, unauthorized treatment units were missed. The facility notified the CUPA for one permit-by-rule (PBR) unit, but they have three or potentially four PBR units.</p> <p>In addition, the CUPA needs to reinspect for the specific requirements related to the treatment of aqueous waste containing cyanide.</p> <p><b>CCR, Title 27, Section 15200 and Title 22, Section 67450 [DTSC]</b></p>	<p>Effective immediately, the CUPA will ensure that they are conducting inspections in a manner consistent with state statute or regulation for businesses subject to tiered permitting program.</p> <p>The CUPA will reinspect the facility for PBR, including treatment of aqueous waste containing cyanide per the cyanide training provided by DTSC.</p> <p>By March 22, 2009, the CUPA will provide a follow up report for this facility and shall submit with the deficiency progress report to Cal/EPA.</p>
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**CUPA Representative**

\_\_\_\_\_  
DAVID R. PARKER  
(Print Name)

\_\_\_\_\_  
Original signed  
(Signature)

**Evaluation Team Leader**

\_\_\_\_\_  
JENNIFER L. LORENZO  
(Print Name)

\_\_\_\_\_  
Original signed  
(Signature)

## **PROGRAM OBSERVATIONS AND RECOMMENDATIONS**

*The observations provided in this section address activities that are not specifically required of the CUPA by statute or regulation. The recommendations, if any, are provided for continuous improvement and it is the CUPA's decision whether or not to follow the recommendations.*

1. **Observation:** The CUPA stated on its Self-Audit reports that their permitting activities were effective; however, the CUPA does not clarify or provide details on the effectiveness of its permitting activities.

**Recommendation:** Cal/EPA recommends that the CUPA include a summary on permitting activities on future Self-Audit reports.

2. **Observation:** The CUPA's aboveground storage tank (AST) information in its policy and procedures, including its I&E Program Plan is outdated.

**Recommendation:** Cal/EPA recommends that the CUPA update its AST information based on the new Aboveground Petroleum Storage Act requirements.

3. **Observation:** The CUPA's inspection report does not include documentation that consent has been granted by the owner/operator to enter his place of business to conduct a hazardous waste generator inspection. Although the CUPA has developed a new inspection report to document that consent has been granted by the owner/operator on the form, but the new inspection report has not been used as observed in most of the files that were reviewed.

**Recommendation:** DTSC recommends that the CUPA documents consent on all inspection reports. Documentation of consent serves to strengthen any potential enforcement case defeating any potential challenge that the fourth amendment may have been abridged.

4. **Observation:** The CUPA is doing an excellent job in ensuring that tiered permitted facilities are updating and submitting their annual Permit by Rule notifications.

**Recommendation:** DTSC encourages the CUPA to keep up the good work.

5. **Observation:** The majority of inspection reports reviewed for minor violations had return to compliance documentation, that is, inspection reports returned with certification statements signed by the owner/operator.

**Recommendation:** The evaluators encourage the CUPA to keep up the good work.

6. **Observation:** The file review indicated that the CUPA rarely noted EPA ID numbers in the hazardous waste generator inspection reports.

**Recommendation:** DTSC recommends that the CUPA include EPA ID numbers for all hazardous waste generator inspection reports.

7. **Observation:** During the hazardous waste generator oversight inspection, the CUPA inspector built a good rapport with the facility representatives. The CUPA inspector was also professional and courteous



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in explaining hazardous waste requirements. In addition, the CUPA had access to a camera, but did not use it during the inspection.

**Recommendation:** Photographs are useful to document violations and the conditions at facilities. Photographs could help strengthen your case should enforcement become necessary.

- 8. Observation:** Additional information could be added to the CUPA's inspection reports to support class I and II violations.

**Recommendation:** DTSC recommends that the inspector should add details of the observed violations to provide a clear and concise picture of any violations and strengthen the inspection reports when informal or formal enforcement actions are taken.

- 9. Observation:** Based on the file review, the CUPA cited federal regulations for the violations in the hazardous waste generator administrative enforcement orders (AEOs).

**Recommendation:** DTSC recommends that the CUPA cite sections from the California Health and Safety Code, the California Code of Regulations, and the CUPA's local ordinance, if applicable.

- 10. Observation:** The CUPA investigates complaints that were referred to them by DTSC in a timely manner including enforcement.

**Recommendation:** DTSC appreciates that the CUPA investigates the complaints. DTSC recommends that all investigations be documented, either by inspection report or by "note to file" and placed in the facility file. Please notify the complaint coordinator Nancy Lancaster, [nlancaster@dtsc.ca.gov](mailto:nlancaster@dtsc.ca.gov), of the disposition of the complaints.

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**EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION**

1. In the last three fiscal years, Santa Clara City Hazardous Materials Division CUPA has exceeded the triennial inspection frequency for the business plan, CalARP, and hazardous waste generator programs. The CUPA conducts a majority of its compliance inspections as “combined” inspections, such as conducting various Unified Program elements along with fire code inspections.
2. The Santa Clara City Fire Department maintains excellent coordination with other agencies within the city, and with other CUPA’s and participating agencies (PA’s) within the county for a consistent Unified Program. The following are examples:
  - a. Every other month, the CUPA staff attends meetings with other CUPA’s and PA’s within the county.
  - b. The CUPA staff actively participates in the Bay Area CUPA Forum, Bay Area Antiterrorism Working Group, county-wide Hazardous Materials Response Group, and the Bay Area Hazardous Waste Technical Advisory Group (TAG) meetings.
  - c. The CUPA’s Hazardous Materials Administrator is the alternate representative of the California Fire Chiefs Association at the CUPA Forum Board meetings.
  - d. The CUPA maintains an internal hazardous materials project team and shares the information (such as ways to improve service to the community) at the county-wide monthly hazardous materials response group meetings.
  - e. The CUPA has an agreement with other CUPA’s/PA’s within the county on hazardous materials mutual aid response activities.
  - f. The CUPA periodically attends the Environmental Crimes Task Force meetings hosted monthly by the county’s district attorney.
  - g. The CUPA coordinates with the Engine Company’s and Business License Departments to discover new businesses.
  - h. The CUPA maintains ongoing informal communication and make referrals to and from other City Departments to investigate or follow-up on potential illegal activities or other violation.

Additionally, the CUPA also provides various training such as the following:

- a. The CUPA has conducted at least six training classes on drug lab awareness to other CUPA’s/PA’s, local police departments, and private companies. The CUPA intends to hold at least six more such classes in October 2008.
  - b. The CUPA provides ongoing training for fire recruits, including emergency response on hazardous materials incidents.
  - c. The CUPA conducts joint hazmat exercises/drills with the 95<sup>th</sup> Weapons of Mass Destruction Civil Support Group Team and other responders county-wide.
  - d. The CUPA staff will provide hazardous materials incident command training to fire department officers next spring.
3. The CUPA uses all enforcement options that are available to the CUPA, incorporating authorities under the Uniform Fire Code and their local Ordinance. The CUPA has also used the administrative enforcement order (AEO) as an effective enforcement tool. The CUPA has initiated five AEO cases under the hazardous waste generator program and one AEO against UST facility during the last three fiscal years. The CUPA has also issued two red tags within the last three fiscal years. In addition, the

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CUPA also works with another city agency (Street Department) for citations related to non-point source violations as another enforcement option.

4. The CUPA has adopted stringent Fire Code ordinances, for which some have been adopted by the state into its California Fire Code. As such, the CUPA is actively involved in amendments to the state fire codes.
5. The CUPA is proactive in obtaining additional resources, such as funds for training or equipment, from outside sources for the department. For example, the CUPA has applied for and successfully secured at least four grants from the Department of Homeland Security and two from the Commercial Equipment Direct Assistance Program (CEDAP). The sixth award was recently issued to the CUPA to receive funds for a biosensor detector from CEDAP.
6. The CUPA has effectively utilized its HdL Business License software, which was initially used by the city's business license unit to integrate data from the fire department and the CUPA program. In addition, the Finance Department uses the database for its billing, which is consolidated onto one invoice including the business license fee, fire department fees and CUPA single fees.
7. On October 6, 2008, Inspector Douglas Hansen conducted the UST site inspection in a thorough and professional manner. He used a detailed and complete Inspection Checklist to document the scope of the inspection and all the required elements in compliance. His attention to detail and knowledge of code and regulations resulted in an excellent inspection. Douglas required the service technician to replace a failed spill bucket and retest it. He left a Notice of Violation with a 30-day Self Certification of Return to Compliance with the facility operator. Douglas also asked the SWRCB evaluator for suggestions on how to improve his inspection technique and procedure.
8. Santa Clara City Fire Department offers its citizens an array of public service programs. The dedication and professionalism of Santa Clara's firefighters is exemplified by the variety of services they provide both on-duty and while volunteering their off-duty time. These programs include:
  - a. Child car seat loaner programs provide car seats that may be borrowed from Fire Station#1 at 777 Benton Street or from the Police Department's Front Desk at 601 El Camino Real.
  - b. Critical Incident Stress Debriefing which involves members of the fire service functioning as peer counselors and task force members who provide emotional support to emergency service workers after experiencing a traumatic emotional emergency response.
  - c. Disaster Supplies Training by which the Fire Department members train city employees on the use of disaster supplies and light rescue tools so that they can be self-sufficient within the first 72 hours of a catastrophic disaster.
  - d. Fire Extinguisher Demonstrations through which the Fire Department instructs members of the business community on the proper use of fire extinguishers to reduce fire loss in industry.
  - e. Home Fire Inspections by which, upon request, a member of the Fire Department will respond to a resident's home and will identify fire and health hazards so that corrective measures can be taken to ensure the safety of the residents.
  - f. Hug-a-Bear Program entails Firefighters actively involved in a program with the Telephone Pioneers of America to give out stuffed animals to children who are victims of traumatic emergency incidents.
  - g. School Visits in which Firefighters visit each school annually, and also upon special request, to promote fire safety and education.

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- h.** Smoke Detector Batteries replacement, by which, as members of the fire service respond to emergency calls at Santa Clara residences, they check the smoke detectors within the homes and replace batteries to ensure their working condition or provide smoke detectors where there is none or they are non-operational.
- i.** Security Bars by which the Santa Clara Fire Department is helping to eliminate potential deaths and injuries associated with non-complaint security bars throughout the community by replacing them for the citizens.
- j.** Development and delivery of compliance classes/training to dry cleaners.
- k.** Environmental education materials/pamphlets on fire prevention and pollution prevention have been developed. Also, general hazardous materials compliance tips and guidance are available, particularly for vehicle maintenance repair facilities. Some of the educational materials are also available in Spanish.
- l.** The CUPA's Web site contains several guidance materials and other related document for public outreach. Placement of hazardous materials forms on a web-based database and user interface program (Unidocs), which is a collaborative effort throughout the county.